

04-CV-05021-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

INTERNATIONAL ELECTRONICS, INC.,

Plaintiff,

v.

HUMAN ELECTRONICS, INC.,

Defendant.

NO. **CV 04-5021 RBL**

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff International Electronics, Inc. ("International Electronics"), through its undersigned attorneys, hereby states its Complaint against Defendant Human Electronics, Inc. ("Human Electronics") as follows.

PARTIES

1. International Electronics is a corporation organized under the laws of the State of Washington, and maintains its principal place of business at 5913 N.E. 127th Avenue, Suite 800, Vancouver, WA 98682.

2. Human Electronics is a corporation organized under the laws of the State of New York, and maintains its principal place of business at 157 Genesee Street, Utica, New York 13501.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1332, 1338 and 1367.

COMPLAINT - 1

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1 4. The Court is the proper venue for this action under 28 U.S.C. § 1391.

2 **BACKGROUND**

3 5. International Electronics manufactures and sells a product line called Catch-A-
4 Call, which allows customers to receive phone calls and faxes while on the Internet,
5 without the need for a second phone line.

6 6. Human Electronics manufactures, advertises and sells a competing product line
7 in interstate commerce, including over the Internet.

8 7. Human Electronics is the purported owner of record of U.S. Patent No. 6,067,353
9 ("the '353 patent").
10

11 **COUNT ONE – BREACH OF CONTRACT**

12 8. International Electronics realleges and incorporates by reference paragraphs 1
13 through 7 of the Complaint.

14 9. In or about April 2003, International Electronics and Human Electronics entered
15 into a contract pursuant to which, among other terms, Human Electronics agreed to
16 assign all right, title and interest in the '353 patent to International Electronics for
17 \$25,000.
18

19 10. Despite this contract, Human Electronics has failed and refused to assign the
20 '353 patent to International Electronics.
21

22 11. International Electronics has performed and remains ready, willing and able to
23 perform its obligations pursuant to this contract.

24 12. International Electronics has performed all conditions required to be performed
25 by it, or the performance of such conditions has been excused by Human Electronics'
26 conduct.

13. International Electronics is entitled to specific performance of the aforesaid contract with Human Electronics.

14. International Electronics has been damaged by Human Electronics' failure to perform its obligations under the contract, in an amount to be proved at trial.

COUNT TWO - LANHAM ACT VIOLATION

15. International Electronics realleges and incorporates by reference paragraphs 1 through 14 of the Complaint.

16. On or about October 30, 2003, Human Electronics falsely accused International Electronics of infringing the '353 patent.

17. In or after October 2003, Human Electronics disparaged International Electronics' Catch-a-Call product line by falsely reporting to certain of International Electronics' customers that said product line infringed the '353 patent.

18. Human Electronics caused the false accusation to enter interstate commerce.

19. Human Electronics' false accusation has deceived and/or is likely to deceive International Electronics' customers.

20. Human Electronics' false accusation is material in that it has influenced and/or is likely to influence the purchasing decisions of International Electronics' customers.

21. On information and belief, Human Electronics acted in bad faith because it knew, should have known, or acted in reckless disregard of the falsity of its accusation of infringement against International Electronics.

22. International Electronics has been and/or will likely be harmed by Human Electronics' false accusation in terms of lost sales and/or eroded goodwill, and in other ways, in an amount to be proved at trial.

23. In addition, International Electronics has suffered and/or will likely suffer irreparable harm caused by Human Electronics' false accusation.

24. Human Electronics' conduct as alleged above is in violation of Section 43(a) of the Lanham Act.

COUNT THREE –DECLARATORY JUDGMENT REGARDING '353 PATENT

25. International Electronics realleges and incorporates by reference paragraphs 1 through 24 of the Complaint.

26. International Electronics has not infringed and does not infringe, directly or indirectly, contributorily or by active inducement, any valid and enforceable claim of the '353 patent.

PRAYER FOR RELIEF

WHEREFORE, International Electronics respectfully prays that this Court:

1. Enter a judgment (1) finding that Human Electronics breached a contract to assign the '353 patent to International Electronics, (2) awarding International Electronics appropriate damages arising from Human Electronics' breach, (3) ordering specific performance of the assignment contract, and (4) adjudging International Electronics to be the owner of all right, title and interest in the '353 patent;

2. Enter a judgment finding that Human Electronics has violated Section 43(a) of the Lanham Act and awarding International Electronics appropriate damages, including enhanced or multiplied damages as may be permitted by the Lanham Act;

3. Issue a preliminary and permanent injunction, enjoining and prohibiting Human Electronics and its agents, servants, employees, officers, attorneys, successors and assigns from:

Communicating by any means or in any manner whatsoever, whether directly or indirectly, its false accusation that International Electronics has infringed

1 the '353 patent to any past, present or future customers or competitors of
2 International Electronics, or to anyone else;

3 4. Enter a judgment granting International Electronics the following additional
4 equitable relief:

5 For each and every customer or competitor of International Electronics to
6 whom Human Electronics has communicated its false accusation that
7 International Electronics infringed the '353 patent, ordering Human
8 Electronics to send a corrective written notice in a form to be approved by the
9 Court;

10 5. Enter a judgment pursuant to 28 U.S.C. § 2201 declaring that International
11 Electronics has not infringed or does not infringe, directly or indirectly, contributorily or
12 by active inducement, any valid and enforceable claim of the '353 patent;

13 6. Award International Electronics pre-judgment interest and its costs and
14 attorneys' fees herein; and


15 7. Award International Electronics such other or further relief that the Court
16 deems appropriate.

17 **DEMAND FOR A JURY TRIAL**

18 International Electronics requests a jury trial of all issues, claims, defenses and
19 counterclaims triable of right to a jury.

20 DATED this 14th day of January, 2004.

21 LANDERHOLM, MEMOVICH, LANSVERK & WHITESIDES, P.S.

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23 _____
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